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FISCAL IMPACT STATEMENT

LS 6176

BILL NUMBER: HB 1213

NOTE PREPARED: Feb 14, 2009

BILL AMENDED: Feb 12, 2009

SUBJECT: Smoking Ban in Public Places.

FIRST AUTHOR: Rep. Brown C

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) *Smoking Prohibition:* The bill prohibits smoking, with certain exceptions, in: (1) public places; (2) enclosed areas of a place of employment; and (3) certain state vehicles. It requires any location that is exempt to post a sign stating that smoking is allowed on the premises.

Indiana Alcohol and Tobacco Commission: It requires the Alcohol and Tobacco Commission to enforce the prohibition.

Infractions: The bill makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three unrelated prior offenses.

Local Smoking Prohibitions: The bill allows local units of government to adopt smoking ordinances stricter than the state law prior to January 1, 2010. It also allows local units to adopt ordinances covering areas not covered by state law.

Repeal: It also repeals the current Clean Indoor Air Law that prohibits smoking in public buildings.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Summary* - The bill will increase costs for the Indiana Alcohol and Tobacco Commission (IATC) to enforce the smoking ban. The increased costs will vary depending on how IATC implements its enforcement responsibility. Also, revenues for the state General Fund could increase through infraction judgements for two Class B infractions established under the bill.

Indiana Alcohol and Tobacco Commission: Under current law, the Clean Indoor Air Law is under the sections of the Indiana Code concerning the State Department of Health (ISDH). Enforcement of the statute is not assigned, meaning that it is enforced by law enforcement officers. Under the bill, the IATC would have enforcement responsibility. The bill prohibits smoking in most public places.

The IATC currently has authority for enforcing the “sale of cigarette” provisions in the public places that would be part of the smoking ban in the bill. In addition, the IATC would have responsibility to enforce the smoking ban in places that the IATC does not currently monitor. As a result, the IATC will need to increase staffing to address this new responsibility. However, there are no data available to estimate the number of public places where enforcement will occur. The IATC could enforce the new smoking ban with its own enforcement agents or delegate enforcement to other local agencies. (Under IC 34-28-5, all law enforcement officers have authority to enforce infractions.) Also, the IATC could actively enforce the smoking ban or choose to only investigate complaints received. These management decisions will determine the additional staffing requirements.

Background on the IATC- The appropriation for the IATC in FY 2009 is \$11.6 M. The IATC is funded with dedicated funds from tobacco and alcohol excise taxes. As of September 2, 2008, there were 97 employees with total salaries of \$4.7 M assigned to the Excise Police Enforcement Section (EPES) of the IATC. The average annual salary of employees of the EPES is \$48,950, and average salaries range from \$27,729 to \$78,000.

Explanation of State Revenues: (Revised) *Impact on Casino Revenue:* The bill exempts the riverboat casinos and racetrack slot machine facilities from the general smoking prohibition in the bill, but requires each facility to provide at least 20% of its gaming positions in a designated contiguous area to be smoke free. This requirement could potentially affect revenue from the riverboat wagering tax and slot machine wagering taxes. The revenue loss would depend on: (1) the extent that casinos must shift existing gaming positions from smoking areas to smoke free areas; and (2) the extent that the revenue yield from gaming positions in smoke free areas is lower than the revenue yield from gaming positions in smoking areas. If the casinos and slot machine facilities add gaming positions to smoke free areas without reducing gaming positions in smoking areas presumably no revenue loss would occur.

Information is currently unavailable but is being developed on the percentage of gaming positions maintained in smoke free areas at the casinos and slot machine facilities. Information on gaming position revenue yield in smoking and nonsmoking casino areas is available from a recent analysis done in Pennsylvania. The average revenue yield on slot machines in nonsmoking areas at casinos in Pennsylvania is 59% to 185% less than the average revenue yield per slot machine in the smoking areas of the casinos. Comparisons of the average yield on slot machines in smoking and nonsmoking areas in all seven Pennsylvania casinos were conducted by the Pennsylvania Department of Revenue in December 2008 pursuant the state’s Clean Indoor Air Act. The analysis covered a 90-day period from September 11-December 10, 2008 as required by the Act.

Background Information: The Pennsylvania Clean Indoor Air Act went into effect on September 11, 2008. The Act prohibits smoking on at least 75 percent of the casino floor in Pennsylvania casinos. However, the Act provided a process for each casino to increase the smoking area from 25% to 50% of the casino floor. Under this provision, 90 days after the effective date of the Act (December 10, 2008) or 90 days after a new casino opens, the casino licensee could request a report from the Pennsylvania Department of Revenue that analyzes the revenue yield per slot machine operated at the casino during the 90-day period. The Act also

required the Pennsylvania Gaming Control Board to verify the analysis by the Department of Revenue. The Act provides that if the average revenue yield per slot machine in the designated smoking areas of a casino exceeds the average revenue yield per slot machine in the designated nonsmoking areas of the casino, the casino licensee could increase the designated smoking area in proportion to the percentage difference in revenue yield. All seven casinos Pennsylvania were able to increase the smoking portion of the casino floor to 50% based on this provision.

Econometric studies estimating the impact of Delaware's statewide smoking ban (which began in November 2002) on gambling at Delaware's racetrack casinos indicate that the ban reduced wagering levels at the casinos by an average of 15% to 16%. By facility, these studies indicate the reductions have varied from about 9% to about 18% depending on the racetrack casino. No studies yet have been conducted to estimate the impact of Illinois's statewide smoking ban (which began in January 2008) on wagering at Illinois's riverboat casinos. However, monthly attendance and wagering revenue data suggest that the smoking ban has led to significant declines apart from declines that may be attributable to the current economic downturn. Attendance and wagering revenue at Illinois riverboat casinos declined in 2008 by 11.4% and 20.9%, respectively. In comparison, attendance and wagering revenue declined at Indiana's 11 riverboat casinos but only by 6.5% and 6.2%, respectively. And, some of this decline was attributable to gambling activity shifting primarily from the 3 casinos in southeast Indiana to the racetrack slot machine facilities which opened in June 2008. If the wagering revenue totals generated at racetrack slot facilities are included with those for the year from the riverboat casinos, statewide wagering revenue actually increased by 1.65% in 2008.

Infractions: There are no data available to indicate how many offenders may be found guilty of prohibited smoking, a Class B infraction, or how many owners, managers, or operators of public places or places of employment may fail to comply with the provisions of the act, a Class B infraction. Both of these offenses may be enhanced to a Class A infraction if the offender has three prior, unrelated convictions. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class B infraction is \$1,000, and the maximum judgment for a Class A infraction is \$10,000. Judgments are deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Impact on Casino Revenue: See Explanation of State Revenues.*

Infractions: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Alcohol and Tobacco Commission.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Gaming Commission, Monthly Revenue Reports: 2007-2008. Illinois Gaming Board, Monthly Riverboat Casino Reports: 2007-2008. Michael R. Pakko, "No Smoking at the Slot Machines: The Effects of Smoke-Free Laws on Gaming Revenues." Working Paper 2005-054A, Federal Reserve Bank of St. Louis. Richard Thalheimer and Mukhtar M. Ali, "The Demand for Casino Gaming with Special Reference to a Smoking Ban." Economic Inquiry, April 2008, 273-282. Pennsylvania Gaming Control Board, "Slot Win per Day Smoking vs Non-Smoking Areas - Slot Win per Day Figures Supplied to Operators by the PA Department of Revenue," December 2008. Dan Stambaugh, Legislative Liaison, Pennsylvania Gaming Control Board, (717) 703-2812.

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